

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARKEL CURRY,

Petitioner,

-v-

DECISION AND ORDER

10-CV-0717S

03-CR-0167S

UNITED STATES OF AMERICA,

Respondent.

Petitioner, Markel Curry, acting *pro se*, seeks relief pursuant to 28 U.S.C. § 2255, alleging that his conviction in this Court was unconstitutionally or unlawfully obtained, as set forth more precisely in the petition.¹ Accordingly,

IT HEREBY IS ORDERED as follows:

1. Pursuant to Rules 4 and 5 of the Rules Governing Section 2255 Proceedings in the United States District Courts, the United States Attorney shall file and serve an **answer** to the petition no later than **November 8, 2010**. The answer shall respond to the allegations of the petition and shall state whether petitioner has used any other available federal remedies including any prior post-conviction motions under these rules or those existing previous to the adoption of the present rules. Further, the answer shall state whether an evidentiary hearing was afforded petitioner in a federal court, whether petitioner appealed the conviction, and what ruling, if any, the United States Court of Appeals has made on the appeal.

¹The document petitioner filed was titled "Motion Under Post Conviction Relief Act, or in the Alternative Writ for Habeas Corpus." It is properly construed herein as a motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255.

Respondent is also ordered to file and serve by the above date a **memorandum of law** addressing each of the issues raised in the petition and including citations of relevant supporting authority.

2. Petitioner shall have twenty (20) days upon receipt of the answer to file a written response to the answer and memorandum of law.

3. Within twenty (20) days of the date this order is filed with the Clerk of Court, respondent may file a motion for a more definite statement or a motion to dismiss the petition, accompanied by appropriate exhibits which demonstrate that an answer to the petition is unnecessary. The timely filing of such motion shall extend the time for filing an answer for fourteen (14) days, but the failure of the Court to act upon the motion within that time shall not further extend the time for filing an answer.

4. The Clerk of Court is directed to serve a copy of the application, together with a copy of this order, upon the United States Attorney for the Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202.

5. All docketing for this action shall be made in the related criminal action 03-CR-0167S.

PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND CORRESPONDENCE TO THE UNITED STATES ATTORNEY.

SO ORDERED

Dated: September 22, 2010
Buffalo, New York

s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court